

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on January 25, 2005 at
8:05 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Rep. Rosalie (Rosie) Buzzas (D)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)

Members Excused: None.

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Barbara Smith, Legislative Branch
Doug Schmitz, OBPP Representative

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 2
Executive Action:

HEARING ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Barbara Smith provided an explanation for the various handouts she had passed out to the Committee members. The first one was the Enforcement Division's statistics, the second was a letter from Swank Construction regarding public input into the Reliance Refinery cleanup process and the third handout was a compilation of complaints received by the DEQ which did not result in a violation.

[EXHIBIT\(jnh19a01\)](#)

[EXHIBIT\(jnh19a02\)](#)

[EXHIBIT\(jnh19a03\)](#)

Richard Oppen, Director of the Montana Department of Environmental Quality (DEQ), recapped the previous day's presentations. He then described what the upcoming presentations would cover.

Tom Livers, Deputy Director of the Director's Office of the DEQ, followed up on questions from the previous day that they had not been able to answer. Initially he wanted to clarify the Decision Package, DP 2007, requesting nine full-time equivalents(FTE). He informed the Committee that four of the FTE were needed permanently but five of them would be one-time only positions. The next topic he revisited was a question by SEN. HAWKS referring to information regarding the cost of turnover. He allowed Dean Rudy to answer this question.

Dean Rudy, Chief Financial Administrative Officer of the DEQ, provided handouts concerning recruitment costs and the cost of employee turnover.

[EXHIBIT\(jnh19a04\)](#)

[EXHIBIT\(jnh19a05\)](#)

He gave a brief background of the DEQ's response to turnover rates and recruitment costs, covering the handouts in more detail.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 15.8}

SEN. BARKUS noted that he had asked where the turnover usually took place. He expressed that the information Mr. Livers produced was exactly why he had asked.

SEN. HAWKS asked for clarification. He understood that included in the turnover costs were the agencies costs for holding open positions.

Mr. Rudy replied that **SEN. HAWKS** was correct, the costs **SEN. HAWKS** was referring to were part of the soft costs.

{Tape: 1; Side: A; Approx. Time Counter: 15.8 - 17.5}

CHAIRMAN RIPLEY suggested that **SEN. BARKUS** was looking more along the lines of how many accounting technicians were vacant versus how many air quality specialists positions were open.

SEN. BARKUS agreed with **CHAIRMAN RIPLEY'S** comment. He indicated that the point was that they could replace forty account technicians and replace only one accounting manager for similar costs. He insisted that the numbers provided were simple averages.

SEN. HAWKS commented that from a performance management standpoint, with regard to vacancies and turnover, he supposed that there would be an increased overhead cost in turnover, which would become a management tool.

Mr. Rudy affirmed **SEN. HAWKS'** comment.

{Tape: 1; Side: A; Approx. Time Counter: 17.5 - 21.1}

Art Compton, Administrator of the Planning, Prevention and Assistance Division, responded to a question about the Alternative Energy Loan Account. He recounted that he had mentioned that loans were capped at \$10,000 and there were two with an outstanding balance of \$47,000. He clarified that they had made eight loans, six were outstanding, and two had been repaid. SB 50 would increase the Alternative Energy Loan, increasing the \$10,000 to \$40,000, which would allow people to actually implement renewable energy sources.

Susan McEachren, Administrative Officer of the Planning, Prevention and Assistance Division, responded to **CHAIRMAN RIPLEY'S** question concerning **DP 2003** and staff funding. She indicated that during the 2005 biennium they received \$149,000 for that purpose. They are asking for \$92,000 in the current biennium. She explained the way the grant works. She reported that the DEQ applies for a three per cent administrative allowance in order to administer projects. The individual projects within the communities have to apply for their money separately from DEQ. She mentioned that the individual

communities have taken longer to apply for their money and the projects were not yet running. They started the grant in fiscal year 2003. She indicated that they had received three years allotment of their administrative costs, the total of which would be \$253,000. They have until June of 2009 to complete the projects in the administrative portion of this project for EPA. One of the reasons she gave for asking for the decrease in authority was due to the withdrawal of one FTE. The cost and time allotment have subsequently gone down.

{Tape: 1; Side: A; Approx. Time Counter: 21.1 - 29.3}

Mr. Livers elaborated on the last question left unanswered from the previous day. CHAIRMAN RIPLEY had asked a question regarding the employee Committee. He informed the Committee that it was almost entirely made up of front-line supervisors.

{Tape: 1; Side: A; Approx. Time Counter: 29.3 - 31.9}

Terry Wadsworth, Supervisor of the Petroleum Tank Release Compensation Board, passed out a handout of the power point presentation. He covered the program, explaining who the staff was, what they do, their accomplishments, the funding sources, and the expenditures.

EXHIBIT (jnh19a06)

SEN. HANSEN asked for Mr. Wadsworth to explain the incentives associated with assisting tank owners and operators.

Mr. Wadsworth indicated that an incentive for keeping the environment sound had to do with the way in which they require the tank owner/operator to comply with the laws and rules. If owner/operators were operating the tank properly or complying with federal laws they would be eligible for funding.

{Tape: 1; Side: A; Approx. Time Counter: 31.9 - 46.1}

REP. MUSGROVE requested a rundown on what had happened with the Petroleum Board since the interim Committee's study.

Mr. Wadsworth started his response with the Legislative Audit. The audit had provided ten recommendations. Several were made to the Petroleum Tank Release Compensation Board and several were made to the Department of Environmental Quality. They have made progress on all of the recommendations from the audit. Some of those projects have been completed and some, he noted, were still in progress. The ones still being worked on are focused

primarily on cost control and information. One of the recommendations made to the Legislature had to do with funds transition. They have worked closely with the Legislative Audit Division and the Department to come up with a strategy that would help them understand how to do the transition. The Board had agreed to provide a biannual report to the Legislature in order to assist them in making that decision, the report and the analysis associated with it is contained in SB 145. He mentioned that they anticipate the report would help in the effort to assist the Legislature in making the decision about future petroleum funding and what would be best for the State of Montana.

REP. MUSGROVE suggested that another incentive for tank owners/operators would be early reporting.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.2}

Terry Wadsworth agreed with **REP. MUSGROVE'S** statement. He expressed that there are some requirements in regard to the time in which they have to report. He elaborated that it was not just the reporting of the actual release but also the reporting on the suspicion of a release.

SEN. BARKUS wondered what the process of release was and what the risks and incentives would be for calling the Petroleum Board.

Mr. Wadsworth described the different phases of a leak. He informed the Committee of the different phases the gas could be released in: the non-aqueous phase liquid, free phase gasoline, the dissolved phase, where the groundwater and the gas have become one, and the aqueous phase. To clean up the non-aqueous phase they basically have to remove the soil. The second step is to clean up the dissolved phase. There are many different methods of cleanup. For the third phase, the aqueous phase, it is more difficult because the contamination is in the groundwater. The fund assists third-party damages in these instances.

SEN. BARKUS followed up, asking who a person would call in the case of a spill.

Mr. Wadsworth replied that if someone suspects or encourages a release they are required to call the Department of Environmental Quality.

SEN. BARKUS inquired whether those who report the contamination received a referral to the appropriate division of the Department.

Mr. Wadsworth explained that the picture the Committee had been provided with was very simplistic. He stressed that the actual geology behind it was very complex. He mentioned that 19% of the Petroleum Board's budget goes towards the Department's activities associated with this subject. He related that what normally happens when a release is discovered is that whoever found it is required to provide a 24-hour report and a 30-day report. Based on the information from the two reports, the Department decides what action is needed. If there is a specific type of leak suspected the Department will require them to provide a work plan or a corrective action plan. The work plan is generally submitted to the Petroleum Board staff for review. The costs are reviewed up-front and they make an effort to assist owner/operators in understanding what the Department considers acceptable costs. He indicated from that point on, if the work plan is accepted, the contractor will then go out and actually perform the cleanup.

{Tape: 1; Side: B; Approx. Time Counter: 5.2 - 12.8}

SEN. BARKUS inferred from what Mr. Wadsworth was saying that the owner made the determination of the work plan.

Terry Wadsworth replied that the state consultant, together with the owner, determined the plan used for cleanup or investigation. If the Department gets a plan that they find unacceptable they negotiate with the consultant. Generally the owner does not have the knowledge to make an acceptable work plan.

CHAIRMAN RIPLEY wanted to know if the number of correction plans was decreasing.

Mr. Wadsworth explained that the number of releases per year have been decreasing and the DEQ is also closing more sites than they are opening. With regard to the activity that is currently going on, there is a significant amount of backlog. The Department is trying to work the backlog off. As the number of new releases is decreasing and the number of sites are being closed they are able to get to lower and lower priority sites. They have a fair amount of historically contaminated sites which they are having to deal with at this time.

CHAIRMAN RIPLEY requested an average of how long it takes to close down a site.

Mr. Wadsworth informed the Committee that the average for cleanup is approximately \$150,000 per release. The time a release stays open varies greatly. Some releases are simple to clean up and they can treat them within 24-hours. However, there are others that have been open for years. He indicated that the real issue on how long a site stays open is how much it has impacted the groundwater and how easily they can get to the contamination.

{Tape: 1; Side: B; Approx. Time Counter: 12.8 - 18}

SEN. HAWKS wondered how the Petroleum Board interfaced with the Indian Nations.

Mr. Wadsworth indicated that they have an Eligibility and Termination memorandum in the works which deals with privately-owned and operated facilities. The approach that appears to be the most successful has to do with whether or not the State has a memorandum of understanding with the particular tribe.

Mr. Wadsworth proceeded to discuss the one Decision Package and the Language dealing with the Petroleum Tank Release Compensation Board.

DP 9001 -- Petro Board Operating Adjustments

After introducing the DP he discussed the Language Appropriation.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 21.8}

CHAIRMAN RIPLEY asserted that he thought the Department was expecting an increase in legal activity.

Mr. Wadsworth explained that in 2001 the council for the Board had submitted a few case files; in 2002 they submitted several more. It has been increasing on a regular basis since then. What he conveyed is that as they enter into the next step, waging the legal battle associated with cost recovery, there may be more funds that need to be extended. He expressed that these assumptions were what the \$70,000 DP was based on. He stated that the Language Appropriation had to do with cost recovery. The reason they went for a Language Appropriation was because they had no exact numbers on the numbers or when cost recovery is going to occur.

CHAIRMAN RIPLEY asked how much money they had spent in 2003 in legal fees.

Terry Wadsworth responded that they had spent approximately \$100,000 in 2003. However, over the last five years they have spent \$500,000 and recovered \$250,000. He tried to put the issue into perspective: in fiscal year 2001 they submitted to the court \$300,000 worth of cost recoveries; in fiscal year 2002 they submitted \$635,000; in fiscal year 2003 they submitted \$7 million for cost recovery; in fiscal year 2004 \$12 million; and so far in fiscal year 2005 as of July 1, they have submitted \$8 million.

Mr. Wadsworth volunteered to expand on the topic of subrogation. He informed the Committee that subrogation had to do with the fact that some owners/operators who have incurred a release were insured at the time the release occurred. He explained that what the Department was doing with subrogation activity was recovering the costs from the insurance companies that were considered responsible parties under that situation.

REP. MUSGROVE asked about what percentage of owners/operators had that type of insurance.

{Tape: 1; Side: B; Approx. Time Counter: 21.8 - 29.1}

Mr. Wadsworth replied that he did not have the numbers in front of him but what they had done was ask the attorney to build a database. They have started with the high priority cases and are about 3/4 of the way through the data.

CHAIRMAN RIPLEY inquired if they were finding some of the owners not to have insurance at all.

Mr. Wadsworth affirmed this statement. He commented that they were finding that some of the operator/owners didn't have insurance at the time of the release.

SEN. BARKUS attested that as the as the Department was working their way down through the cases to lower priorities, the legal costs should decrease.

Mr. Wadsworth supported this statement. He indicated that they were moving ahead at an easy pace. What they have come upon with regard to properties and rights is the cusp of embarking on legal actions to push the recovery dollars through. He reported that what he was trying to do with the assistance of his attorneys was to minimize the costs as much as he could. He indicated that some of the cases that they are going up against contain serious dollars. If those cases end up in court first he predicts that the Department would have to spend a lot of money. To date they

have not been in court, all cases that have been settled have been settled out of court.

Mr. Livers commented on the Petroleum Board presentation. Referring to SEN. BARKUS' last question, he informed the Committee that there were two independent tracks being followed. These two tracks are the Department's role in regard to regulation and the Board's role in regard to fund management and legal actions. There are deadlines in place pertaining to upgrades. In the process of doing the upgrades there had been a large uncovering of historically contaminated sites that needed to be cleaned up and dealt with and were potentially eligible for the funds. He mentioned that these cases were different than the subrogation issues which the Board is dealing with.

{Tape: 1; Side: B; Approx. Time Counter: 29.1 - 44.1}

Steve Welch, Administrator of the Permitting and Compliance Division, began his presentation, passing out a copy of the power point presentation. The presentation covered what the Division does, who it is comprised of and what their accomplishments have been.

EXHIBIT(jnh19a07)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.6}

SEN. HAWKS asked about the Division's thoughts on a one-stop shopping and permitting process.

Mr. Welch answered that one-stop shopping and processing was in place to a certain degree. He indicated that all those who give permits communicate so they have the ability to integrate a number of different programs. He also mentioned that individuals had to perform self-inspection. Each of the operators require some sort of annual reporting system and/or continuous monitoring of the impacted environment.

Mr. Welch having no further questions, began introducing the Decision Packages. The packages which he discussed included:

DP 5010 -- Water Protection Bureau wastewater Permitting

There was no discussion on DP 5010 at this time.

DP 5011 -- Air Permitting of Oil and Gas Production

There were no questions asked concerning DP 5011 at this time.

DP 5015 -- Public Water Supply and Subdivision FTE

There was no discussion on DP 5015 at this time.

DP 5020 -- Hazardous Waste - Brownsfield Biennial Authority

{Tape: 2; Side: A; Approx. Time Counter: 29.6 - 50.7}

Mr. Welch continued to discuss the Decision Packages with the Committee.

**DP 5004 -- Hard Rock and Major Facility Siting Act Projects
Operating Adjustments**

There were no questions concerning DP 5004 at this time.

DP 5001 -- Air Operating Adjustment

There was no discussion on DP 5001 at this time.

**DP 5002 -- Industrial and Energy Minerals Bureau Operating
Adjustments**

There were no questions regarding DP 5002 at this time.

**DP 5003 -- Environmental Management Bureau Administration
Operating Adjustments**

CHAIRMAN RIPLEY asked, in relation to **DP 5003**, if the Department had sought any legislation to correct the situation and provide for a deflection of fees.

Mr. Welch responded that they had not.

SEN. BARKUS wondered what kind of monitoring was required under the Major Facility Siting Act (MFSA).

Steve Welch replied that under MFSA businesses are not required to secure distress permits. He explained that the Department has to monitor a number of sites that fall under the MFSA guidelines.

SEN. BARKUS asked for clarification. He surmised from what he had heard that MFSA regulates the location of facilities, yet once the facility was constructed it would fall under the purview of DEQ.

Mr. Welch answered that, in some sense, what SEN. BARKUS said was true. However, with the particular issue of monitoring, MFSA was issued a certificate and in that certificate they were required to do certain things but were also exempt from certain things also. One of the activities which they were exempt from was groundwater monitoring.

DP 5005 -- Public Water and Subdivision Operations Adjustment

{Tape: 2; Side: B; Approx. Time Counter: 1.8 - 13.3}

REP. MUSGROVE inquired about **DP 5005**. He noted that there was \$173,000 for non-employee travel and wanted an explanation on this point.

Mr. Welch reported that it was for the operator reimbursement and training. The money is from an Environmental Protection Agency fund out of which they reimburse the operators for their training and also their travel to and from the operating schools.

CHAIRMAN RIPLEY asked if it was the same amount that was required last session.

Judy Hanson, Fiscal Officer of the Permitting and Compliance Division, remarked that the amount they were requesting was the amount of the authority in the base from 2004. She stated that they continually do outreach programs for operators and interested individuals in communities and water systems under 3,300 people. They want to make sure that they have the spending Authority to handle an increase in interest. She indicated that they had not spent their complete authority last biennium.

{Tape: 2; Side: B; Approx. Time Counter: 13.3 - 16.3}

DP 5006 -- Water Protection Bureau Operating Adjustments

There was no discussion of DP 5006 at this time.

DP 5008 -- Waste and Underground Tank Management Operating Adjustments

There were no questions regarding DP 5006 at this time.

DP 5010 -- Water Protection Bureau Wastewater Permitting

There was no discussion on DP 5010 at this time.

DP 5013 -- Air Quality Research Technical Study - OTO

There were no questions regarding DP 5013 at this time.

DP 5016 -- Increase Grants to Counties

There was no discussion concerning DP 5016 at this time.

DP 5018 -- Permitting and Compliance Division - Vehicles

There were no questions on DP 5018 at this time.

DP 5024 -- Permitting and Compliance Division Data Management

There was no discussion pertaining to DP 5024 at this time.

DP 5015 -- Subdivision Training and Review

{Tape: 2; Side: B; Approx. Time Counter: 16.3 - 28.6}

SEN. BARKUS wondered why **DP 5025** was one-time-only.

Mr. Welch responded that they were hoping that they would be able to create some kind of cycle, where they would need this package again in the future, but that they didn't have the numbers at this time.

CHAIRMAN RIPLEY assumed that there were a lot of incorrect and uncompleted applications since they were increasing full-time employees and overtime.

Mr. Welch agreed with this statement.

DP 5020 -- Hazardous Waste - Brownsfield Biennial Authority

There were no questions regarding DP 5020 at this time.

DP 5022 -- Opencut Additional Staff and DP 5026 -- RHODIA Settlement

{Tape: 2; Side: B; Approx. Time Counter: 28.6 - 36}

SEN. HAWKS commented that it seemed that there was a significant outreach aspect, some of it to soften the regulatory face and some to facilitate regulations. He wondered if they had a sense

of what percentage of the Department's budget related to outreach.

Mr. Welch did not have the percentage but agreed that the efforts did promote the Department and was important to their success.

SEN. HAWKS stated that it was a positive trade-off with regard to the costs of being a regulatory program.

Steve Welch supported this statement fully.

SEN. HAWKS indicated that looking at the overview, the budget had significant increases. He was curious if this was related primarily to their attempts to play catch-up.

Mr. Welch agreed that some of it was related to catch-up but that a large amount of the funding was related to the communities that required permits.

{Tape: 2; Side: B; Approx. Time Counter: 36 - 41.7}

Richard Opper pointed out that they had two areas in the Department that were asking for an increase in funding, primarily because they were understaffed. He expressed that the rest of the programs had remained fairly stable.

Mr. Welch added that there was a significant increase, \$26 million, in bond forfeitures.

CHAIRMAN RIPLEY urged the Committee to read the Swank Enterprises letter which had been provided the previous day. He indicated that the next day would be short and scheduled the Committee to meet at 9:00 A.M. for executive action.

ADJOURNMENT

Adjournment: 10:00 A.M.

REP. RICK RIPLEY, Chairman

BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT ([jnh19aad0.PDF](#))